

2013 DRAFTING REQUEST

Bill

Received:	7/2/2013	Received By:	mduchek
Wanted:	As time permits	Same as LRB:	
For:	Gary Hebl (608) 266-7678	By/Representing:	Andrew Logman
May Contact:		Drafter:	mduchek
Subject:	Health - miscellaneous	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
 Requester's email: **Rep.Hebl@legis.wisconsin.gov**
 Carbon copy (CC) to: **tamara.dodge@legis.wi.gov**

Pre Topic:

No specific pre topic given

Topic:

Require a notice when ordering a test for Lyme disease about ineffectiveness of test

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mduchek 8/9/2013			_____			
/P1	mduchek 9/24/2013	evinz 10/7/2013	jfrantze 8/16/2013	_____	lparisi 8/16/2013		State
/P2	mduchek 10/18/2013	evinz 10/23/2013	jmurphy 10/7/2013	_____	lparisi 10/7/2013		State
/1			rschluet	_____	mbarman	mbarman	State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			10/24/2013	_____	10/24/2013	10/29/2013	

FE Sent For:

@
INTRO

<END>

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/P2			jmurphy 10/7/2013		lparisi 10/7/2013		State

1 eev
10/23/13
1 eev
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J
10/23/13

FE Sent For:

<END>

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/?	mduchek 8/9/2013						
/P1		evinz 8/16/2013	jfrantze 8/16/2013		lparisi 8/16/2013		State
FE Sent For:		10/2/13 eev	10/7/13 eev	10/1/13 Jm			

<END>

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Pre Topic:

No specific pre topic given

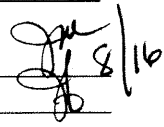
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/?	mduchek	/pleev 8/15/13	/pleev 8/16/13	 8/16			

FE Sent For:

<END>

Dodge, Tamara

From: Logman, Andrew
Sent: Tuesday, June 18, 2013 3:00 PM
To: Dodge, Tamara
Subject: Lyme Disease Disclosure Act
Attachments: Lyme Testing Disclosure.docx

I have attached the drafting memo, if you have any questions please feel free to contact me.

Thank you,

Andrew Logman
Office of Representative Gary Hebl
120 North
State Capitol

To: Tammy Dodge, Legislative Drafting Office

From: Andrew Logman, Office of Representative Gary Hebl

RE: Lyme Disease Testing Disclosure

We would like to draft a disclosure bill similar to Virginia's 2013 HB 1933 (<http://lis.virginia.gov/cgi-bin/legp604.exe?131+ful+CHAP0215>) . We would like our bill to differ in the following ways:

- This notice should read "ACCORDING TO THE CENTERS FOR DISEASE CONTROL AND PREVENTION, AS OF 2011 LYME DISEASE IS THE SIXTH MOST COMMON NATIONALLY NOTIFIABLE DISEASE IN THE UNITED STATES."

YOUR HEALTH CARE PROVIDER HAS ORDERED A LABORATORY TEST FOR THE PRESENCE OF LYME DISEASE FOR YOU. CURRENT LABORATORY TESTING FOR LYME DISEASE CAN BE PROBLEMATIC AND STANDARD LABORATORY TESTS OFTEN RESULT IN FALSE NEGATIVE AND FALSE POSITIVE RESULTS, AND IF DONE TOO EARLY, YOU MAY NOT HAVE PRODUCED ENOUGH ANTIBODIES TO BE CONSIDERED POSITIVE BECAUSE YOUR IMMUNE RESPONSE REQUIRES TIME TO DEVELOP ANTIBODIES. IF YOU ARE TESTED FOR LYME DISEASE, AND THE RESULTS ARE NEGATIVE, THIS DOES NOT NECESSARILY MEAN YOU DO NOT HAVE LYME DISEASE. IF YOU CONTINUE TO EXPERIENCE SYMPTOMS, YOU SHOULD CONTACT YOUR HEALTH CARE PROVIDER AND INQUIRE ABOUT THE APPROPRIATENESS OF RETESTING OR ADDITIONAL TREATMENT."

- We would also like to tie this warning only to the current Lyme disease tests (Enzyme-linked Immunoabsorbent Assay, Immunofluorescent Assay, Western Blot Test) . As future tests are developed and approved by the FDA for Lyme disease testing, the DHFS should decide if they are precise enough to warrant the same disclosure.
- Allow the DHFS to adjust the wording of the first paragraph to reflect current statistics.

This should be worked into the existing DHS 254.52 administrative code.

VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

CHAPTER 215

An Act to amend the Code of Virginia by adding a section numbered 54.1-2963.2, relating to Lyme disease; disclosure of information to patients.

[H 1933]

Approved March 12, 2013

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 54.1-2963.2 as follows:

§ 54.1-2963.2. Lyme disease testing information disclosure.

A. Every licensee or his in-office designee who orders a laboratory test for the presence of Lyme disease shall provide to the patient or his legal representative the following written information:

"ACCORDING TO THE CENTERS FOR DISEASE CONTROL AND PREVENTION, AS OF 2011 LYME DISEASE IS THE SIXTH FASTEST GROWING DISEASE IN THE UNITED STATES.

YOUR HEALTH CARE PROVIDER HAS ORDERED A LABORATORY TEST FOR THE PRESENCE OF LYME DISEASE FOR YOU. CURRENT LABORATORY TESTING FOR LYME DISEASE CAN BE PROBLEMATIC AND STANDARD LABORATORY TESTS OFTEN RESULT IN FALSE NEGATIVE AND FALSE POSITIVE RESULTS, AND IF DONE TOO EARLY, YOU MAY NOT HAVE PRODUCED ENOUGH ANTIBODIES TO BE CONSIDERED POSITIVE BECAUSE YOUR IMMUNE RESPONSE REQUIRES TIME TO DEVELOP ANTIBODIES. IF YOU ARE TESTED FOR LYME DISEASE, AND THE RESULTS ARE NEGATIVE, THIS DOES NOT NECESSARILY MEAN YOU DO NOT HAVE LYME DISEASE. IF YOU CONTINUE TO EXPERIENCE SYMPTOMS, YOU SHOULD CONTACT YOUR HEALTH CARE PROVIDER AND INQUIRE ABOUT THE APPROPRIATENESS OF RETESTING OR ADDITIONAL TREATMENT."

B. Licensees shall be immune from civil liability for the provision of the written information required by this section absent gross negligence or willful misconduct.

2. That the provisions of this act shall expire on July 1, 2018.

Duchek, Michael

From: Logman, Andrew
Sent: Friday, July 12, 2013 1:34 PM
To: Duchek, Michael
Subject: RE: Lyme disease draft

Hello Mike,

Sorry for the delay in getting back to you, I have been out of the office. Yes, I would like to have it in the statutes. It would be best if we did include all licensed healthcare provider that would order such a test. I do not think that the sunset date is necessary because of the DHS's ability to decide it is no longer applicable. If there are any more questions let me know. I look forward to working with you on this.

Thanks,
Andrew Logman

From: Duchek, Michael
Sent: Tuesday, July 02, 2013 11:44 AM
To: Logman, Andrew
Subject: Lyme disease draft

Hello Andrew,

I received your drafting request about lyme disease from Tami Dodge. You mentioned in your instructions section DHS 254.52 of the administrative code. However, the citation you provided appears to correspond to the Wisconsin statutes, not the administrative code. If you did want this to be put into the administrative code, then the Department of Health Services would be promulgating rules and we would probably do a basic bill to require them to do that. If you want it in the statutes, then we would put all of this detail into the statutes. Since you do include all of this detail, I assume you want it in the statutes, not the code, but if you could confirm that would be great.

The Virginia bill appears to put the requirement on licensed professionals, but it doesn't seem to specify which ones. I would probably draft it so that it applies to any health care provider who might order such a test. I would also note the Virginia bill appears to have a sunset date of **July 1, 2018**. I would include that as well unless you tell me otherwise.

Thanks,

Mike Duchek
Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-0130



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2616/P1

RMR

soon

In 8-9-13

Leev
MED

pf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

today

SAJ
xref J

Gen

1 AN ACT...; relating to: required notices by a health care provider who orders a
2 test for the presence of Lyme disease and legal immunity for health care
3 providers who provide the notice.

Analysis by the Legislative Reference Bureau

✓ This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 254.52 (title) of the statutes is amended to read:

5 **254.52 (title) Lyme disease; treatment, testing, information, and**
6 **research.**

7 **History:** 1989 a. 31; 1993 a. 27 s. 49; Stat. ~~1993~~ s. 254.52; 1995 a. 27 s. 9145 (1); 1997 a. 27. ✓
8 **SECTION 2.** 254.52 (1) of the statutes is renumbered 254.52 (1) (intro.) and amended to read:

254.52 (1) (intro.) The department shall ~~perform~~ do all of the following:

(a) Perform research relating to Lyme disease in humans.

History: 1989 a. 31; 1993 a. 27 s. 49; Stats. 1993 s. 254.52; 1995 a. 27 s. 45 (1); 1997 a. 27.

SECTION 3. 254.52 (1) (b), (c), and (d) of the statutes are created to read:

254.52 (1) (b) Prescribe and make available on the Internet a form with the following notice to be provided to patients under sub. (3):

"ACCORDING TO THE CENTERS FOR DISEASE CONTROL AND PREVENTION, AS OF [YEAR], LYME DISEASE IS THE [RANKING] MOST COMMON NATIONALLY NOTIFIABLE DISEASE IN THE UNITED STATES.

YOUR HEALTH CARE PROVIDER HAS ORDERED A LABORATORY TEST FOR THE PRESENCE OF LYME DISEASE FOR YOU. CURRENT LABORATORY TESTING FOR LYME DISEASE CAN BE PROBLEMATIC AND STANDARD LABORATORY TESTS OFTEN RESULT IN FALSE NEGATIVE AND FALSE POSITIVE RESULTS, AND IF DONE TOO EARLY, YOU MAY NOT HAVE PRODUCED ENOUGH ANTIBODIES TO BE CONSIDERED POSITIVE BECAUSE YOUR IMMUNE RESPONSE REQUIRES TIME TO DEVELOP ANTIBODIES. IF YOU ARE TESTED FOR LYME DISEASE, AND THE RESULTS ARE NEGATIVE, THIS DOES NOT NECESSARILY MEAN YOU DO NOT HAVE LYME DISEASE. IF YOU CONTINUE TO EXPERIENCE SYMPTOMS, YOU SHOULD CONTACT YOUR HEALTH CARE PROVIDER AND INQUIRE ABOUT THE APPROPRIATENESS OF RETESTING OR ADDITIONAL TREATMENT."

C (b) ^{Annually} Update the first paragraph of the notice under par. (a) to reflect current statistics.

(1) (d) Provide in the form under par. (a) that a health care provider is required to provide the notice to patients when ordering the enzyme-linked immunoabsorbent assay, the immunofluorescent assay, the western blot test, and any additional test identified by the department under par. (c) as being appropriate for the notice, if the test is being ordered to detect the presence of Lyme disease.

(2) (e) (d) Identify whether any tests for the presence of Lyme disease, in addition to those specified under par. (c), that are available to patients are appropriate for the notice under par. (a).

****NOTE: I provided that DHS must prescribe a form for the notice and update the form as needed. Is that OK?

SECTION 4. 254.52 (3) of the statutes is created to read:

254.52 (3) (a) In this subsection, "laboratory test for the presence of Lyme disease" means the enzyme-linked immunoabsorbent assay, the immunofluorescent assay, the western blot test, and any additional test identified by the department under sub. (1) (c) as being appropriate for the notice required under par. (b), if the test is being ordered to detect the presence of Lyme disease.

(b) A health care provider who orders a laboratory test for the presence of Lyme disease for a patient shall provide to the patient or the patient's legal representative an up-to-date copy of the form prescribed by the department under sub. (3). (b)

(c) A health care provider who complies with par. (b) may not be held civilly or criminally liable for the provision of the form, absent gross negligence or willful misconduct.

****NOTE: I am not clear about what the purpose of this immunity provision is. Does this mean to say that the health care provider is not liable for failing to properly diagnose a case of Lyme disease if he or she provides this notice?

21

(END)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2616/P1ins
.....

Ins 2-6

1 "According to the Centers for Disease Control and Prevention, as of [YEAR],
2 Lyme disease is the [RANKING] most common nationally notifiable disease in the
3 United States.

4
5 Your health care provider has ordered a laboratory test for the presence of Lyme
6 disease for you. Current laboratory testing for Lyme disease can be problematic and
7 standard laboratory tests often result in false negative and false positive results, and
8 if done too early, you may not have produced enough antibodies to be considered
9 positive because your immune response requires time to develop antibodies. If you
10 are tested for Lyme disease, and the results are negative, this does not necessarily
11 mean you do not have Lyme disease. If you continue to experience symptoms, you
12 should contact your health care provider and inquire about the appropriateness of
13 retesting or additional treatment."

in the first paragraph
of the notice instead
XXXX NOTE: The word "notifiable" is a term many
consumers may not be familiar with. You may wish
the notice to say "the [ranking] most common disease
in the United States that must be reported to the
CDCs" or something similar.

End Ins 2-6

Duchek, Michael

From: Logman, Andrew
Sent: Thursday, September 12, 2013 1:36 PM
To: Duchek, Michael
Subject: RE: Lyme Disease Draft

Mike,

Allowing the DHS to have the form available in other languages is a great idea, let's put that in.

Thanks,

Andrew

From: Duchek, Michael
Sent: Friday, September 06, 2013 9:50 AM
To: Logman, Andrew
Subject: RE: Lyme Disease Draft

Andrew,

I had one other thought. Do you want DHS to be able to make the form available in other languages (Spanish and Hmong come to mind)?

I am also reworking the liability provision in accordance with what you expressed. Thanks,

-Mike

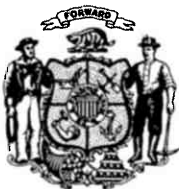
From: Logman, Andrew
Sent: Monday, August 26, 2013 1:07 PM
To: Duchek, Michael
Subject: Lyme Disease Draft

Thanks for getting the draft to me. I agree that we should change the wording to of the first paragraph of the statement to "...the [rank] most common disease in the United States of the illnesses that must be reported to the CDC."

The addition of the form and update it as needed is good. The immunity clause is so that the health providers will not be sued for incorrect test results after they give the notice; also, it acts as an enforcement clause without having the DHS needing to provide a penalty.

If we update the notification, we should be good to go. Thank you very much.

-Andrew Logman



State of Wisconsin
2013 - 2014 LEGISLATURE

In 9-24-13

other



LRB-2616/P1

MED:eev:007

P2

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Inserts

Regen

1 AN ACT *to renumber and amend* 254.52 (1); *to amend* 254.52 (title); and *to*
2 *create* 254.52 (1) (b), (c), (d) and (e) and 254.52 (3) of the statutes; **relating to:**
3 required notices by a health care provider who orders a test for the presence of
4 Lyme disease and legal immunity for health care providers who provide the
5 notice.

Ins Analysis

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 SECTION 1. 254.52 (title) of the statutes is amended to read:

7 254.52 (title) Lyme disease; ~~treatment~~; testing; ~~information~~; and

8 ~~research~~ ^{keep}
↑ strike ↑

↑ strike

↑ strike

↑ strike

SECTION 2. 254.52 (1) of the statutes is renumbered 254.52 (1) (intro.) and amended to read:

254.52 (1) (intro.) The department shall ~~perform~~ do all of the following:

(a) Perform research relating to Lyme disease in humans.

SECTION 3. 254.52 (1) (b), (c), (d) and (e) of the statutes ^{is} are created to read:

254.52 (1) (b) ^{1.} Create and make available on the Internet a form with the following notice to be provided to patients under sub. (3):

"According to the Centers for Disease Control and Prevention, ^(CDC) as of [YEAR], Lyme disease is the [RANKING] most common nationally notifiable disease in the United States. ^{of the diseases that must be reported to the CDC}

Your health care provider has ordered a laboratory test for the presence of Lyme disease for you. Current laboratory testing for Lyme disease can be problematic and standard laboratory tests often result in false negative and false positive results, and if done too early, you may not have produced enough antibodies to be considered positive because your immune response requires time to develop antibodies. If you are tested for Lyme disease, and the results are negative, this does not necessarily mean you do not have Lyme disease. If you continue to experience symptoms, you should contact your health care provider and inquire about the appropriateness of retesting or additional treatment."

***NOTE: The word "notifiable" in the first paragraph of the notice is a term many consumers may not be familiar with. You may instead wish the notice to say "the [ranking] most common disease in the United States that must be reported to the CDC," or something similar.

(c) ^{e2.} Annually update the first paragraph of the notice under par. (b) to reflect current statistics. ^{subd. 1.}

(d) ^{e3.} ^{Include} Provide in the form under par. (b) that a health care provider is required to provide the notice to patients when ordering the enzyme-linked immunoabsorbent

INS
2-21

1 assay, the immunoflorescent assay, the western blot test, and any additional test
2 identified by the department under par. (e) as warranting the notice, if the test is
3 being ordered to detect the presence of Lyme disease.

4 (e) Identify whether any tests for the presence of Lyme disease, in addition to
5 those specified under par. (d) that are available to patients warrant the notice under
6 par. (b).

***NOTE: I provided that DHS must create a form for the notice and update the form as needed. Is that OK?

7 SECTION 4. 254.52 (3) of the statutes is created to read:

8 254.52 (3) (a) In this subsection, "laboratory test for the presence of Lyme
9 disease" means the enzyme-linked immunoabsorbent assay, the immunoflorescent
10 assay, the western blot test, and any additional test identified by the department
11 under sub. (1) (e) as warranting the notice under sub. (1) (b), if the test is being
12 ordered to detect the presence of Lyme disease.

13 (b) A health care provider who orders a laboratory test for the presence of Lyme
14 disease for a patient shall provide to the patient or the patient's legal representative
15 an up-to-date copy of the form created by the department under sub. (1) (b).

16 (c) A health care provider who complies with par. (b) may not be held civilly or
17 criminally liable for the provision of the form, absent gross negligence or willful
18 misconduct.

***NOTE: I am not clear about what the purpose of this immunity provision is. Does this mean to say that the health care provider is not liable for failing to properly diagnose a case of Lyme disease if he or she provides this notice?

19 (END)

his or her failure to diagnose that individual with Lyme disease

Ins 3-16

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2616/P2ins
MED:eev:eev

INSERT ANALYSIS

Under current law, the Department of Health Services (DHS) must conduct various activities related to researching, monitoring, and providing education about the spread and incidence of Lyme disease in humans, including developing and distributing information about Lyme disease through the offices of physicians and local health departments. This bill requires the Department of Health Services (DHS) to create and make available on the Internet a form with a notice for patients who receive certain specified laboratory tests for the presence of Lyme disease. The form must contain a notice informing the patient: 1) about the prevalence of Lyme disease in the United States; 2) about the potential for a false negative or false positive test result for the presence of Lyme disease; and 3) that a patient whose test is negative should contact his or her health care provider about being retested for Lyme disease if the patient continues to experience symptoms. The bill requires a health care provider who orders a specified test for the presence of Lyme disease for a patient to provide the patient with a copy of the form and requires DHS to update the form annually to account for the most recent statistics and for additional tests that are developed to detect the presence of Lyme disease and that warrant the notice. The bill also provides that, absent gross negligence or willful misconduct, a health care provider who orders a test for the presence of Lyme disease for a patient and who provides the patient with the form may not be held civilly or criminally liable for his or her failure to diagnose that patient with Lyme disease at that time if the test is negative for the presence of Lyme disease.

INSERT 2-21

- 1 3. Include in the form under subd. 1. an explanation of the requirement under
2 sub. (3).

INSERT 3-5

- 3 the enzyme-linked immunoabsorbent assay, the immunoflorescent assay, and
4 the western blot test

INSERT 3-6

- 5 5. Translate the form under subd. 1. into Spanish and other languages spoken
6 by a significant number of state residents, as determined by the department, and
7 update and make available each translated form as provided in this paragraph.

INSERT 3-16

1 (c) Absent gross negligence or willful misconduct, a health care provider who
2 orders a laboratory test for the presence of Lyme disease for a patient and who
3 complies with par. (b) may not be held civilly or criminally liable for his or her failure
4 to diagnose that patient with Lyme disease at that time if the test is negative for the
5 presence of Lyme disease.

7

Duchek, Michael

From: Logman, Andrew
Sent: Thursday, October 17, 2013 1:57 PM
To: Duchek, Michael
Subject: RE: Lyme Disease Bill

We've discussed it here in the office, we feel enforcement falls under the existing malpractice laws in Wisconsin. Thanks for clarifying that for us. Let's move forward by removing that subsection and go forward with a /1.

Thanks,
Andrew

From: Duchek, Michael
Sent: Thursday, October 17, 2013 1:43 PM
To: Logman, Andrew
Subject: RE: Lyme Disease Bill

OK. So that would just leave the requirement, without specifying any specific penalty or consequence for not complying.

Do you want another preliminary draft or a /1?

-Mike

From: Logman, Andrew
Sent: Thursday, October 17, 2013 1:36 PM
To: Duchek, Michael
Subject: RE: Lyme Disease Bill

Mike,
Sorry, I misinterpreted what was said here in the office. We only would like to remove subsection c of section 4 (page 3 ln 23-25, page 4 ln 1-2). Sorry for the confusion.

-Andrew

From: Duchek, Michael
Sent: Monday, October 14, 2013 8:50 AM
To: Logman, Andrew
Subject: RE: Lyme Disease Bill

Andrew,

Removing Section 4 would mean that not only would the liability provision be removed, but the requirement to give the form to patients would be removed as well. Is that consistent with the intent? That would just leave the requirements for DHS to create and update the form, basically. Let me know.

-Mike

From: Logman, Andrew
Sent: Thursday, October 10, 2013 1:48 PM

To: Duchek, Michael
Subject: Lyme Disease Bill

Mike,

I received the most recent draft of the Lyme Disease Notification bill, and here in the office we have discussed one change. We would like to remove the physician liability clause, as Wisconsin's malpractice laws should already cover this issue. Let's remove the Section 4 part of the draft and then move forward from there.

Thank You,
Andrew Logman



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2616/P2

MED:eev:eev

In 10-18-13

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT *to renumber and amend* 254.52 (1); *to amend* 254.52 (title); and *to*
2 *create* 254.52 (1) (b) and 254.52 (3) of the statutes; **relating to:** required
3 notices by a health care provider who orders a test for the presence of Lyme
4 disease and legal immunity for health care providers who provide the notice.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Health Services (DHS) must conduct various activities related to researching, monitoring, and providing education about the spread and incidence of Lyme disease in humans, including developing and distributing information about Lyme disease through the offices of physicians and local health departments. This bill requires the Department of Health Services (DHS) to create and make available on the Internet a form with a notice for patients who receive certain specified laboratory tests for the presence of Lyme disease. The form must contain a notice informing the patient: 1) about the prevalence of Lyme disease in the United States; 2) about the potential for a false negative or false positive test result for the presence of Lyme disease; and 3) that a patient whose test is negative should contact his or her health care provider about being retested for Lyme disease if the patient continues to experience symptoms. The bill requires a health care provider who orders a specified test for the presence of Lyme disease for a patient to provide the patient with a copy of the form and requires DHS to update the form annually to account for the most recent statistics and for additional tests that are developed to detect the presence of Lyme disease and that warrant the notice. The bill also provides that, absent gross negligence or willful misconduct, a

health care provider who orders a test for the presence of Lyme disease for a patient and who provides the patient with the form may not be held civilly or criminally liable for his or her failure to diagnose that patient with Lyme disease at that time if the test is negative for the presence of Lyme disease.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 254.52 (title) of the statutes is amended to read:

254.52 (title) Lyme disease; ~~treatment, information and research.~~

SECTION 2. 254.52 (1) of the statutes is renumbered 254.52 (1) (intro.) and amended to read:

254.52 (1) (intro.) The department shall ~~perform~~ do all of the following:

(a) Perform research relating to Lyme disease in humans.

SECTION 3. 254.52 (1) (b) of the statutes is created to read:

254.52 (1) (b) 1. Create and make available on the Internet a form with the following notice to be provided to patients under sub. (3):

“According to the Centers for Disease Control and Prevention (CDC), as of [YEAR], Lyme disease is the [RANKING] most common disease in the United States, of the diseases that must be reported to the CDC.

Your health care provider has ordered a laboratory test for the presence of Lyme disease for you. Current laboratory testing for Lyme disease can be problematic and standard laboratory tests often result in false negative and false positive results, and if done too early, you may not have produced enough antibodies to be considered positive because your immune response requires time to develop antibodies. If you are tested for Lyme disease, and the results are negative, this does not necessarily mean you do not have Lyme disease. If you continue to experience symptoms, you

1 should contact your health care provider and inquire about the appropriateness of
2 retesting or additional treatment.”

3 2. Annually update the first paragraph of the notice under subd. 1. to reflect
4 current statistics.

5 3. Include in the form under subd. 1. an explanation of the requirement under
6 sub. (3).

7 4. Identify whether any tests for the presence of Lyme disease, in addition to
8 the enzyme-linked immunoabsorbent assay, the immunoflorescent assay, and the
9 western blot test, that are available to patients warrant the notice under subd. 1. and
10 update the form accordingly.

11 5. Translate the form under subd. 1. into Spanish and other languages spoken
12 by a significant number of state residents, as determined by the department, and
13 update and make available each translated form as provided in this paragraph.

14 **SECTION 4.** 254.52 (3) of the statutes is created to read:

15 254.52 (3) (a) In this subsection, “laboratory test for the presence of Lyme
16 disease” means the enzyme-linked immunoabsorbent assay, the immunoflorescent
17 assay, the western blot test, or any additional test identified by the department under
18 sub. (1) (b) 4. as warranting the notice under sub. (1) (b) 1., if the test is being ordered
19 to detect the presence of Lyme disease.

20 (b) A health care provider who orders a laboratory test for the presence of Lyme
21 disease for a patient shall provide to the patient or the patient’s legal representative
22 an up-to-date copy of the form created by the department under sub. (1) (b).

23 (c) Absent gross negligence or willful misconduct, a health care provider who
24 orders a laboratory test for the presence of Lyme disease for a patient and who
25 complies with par. (b) may not be held civilly or criminally liable for his or her failure

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1 to diagnose that patient with Lyme disease at that time if the test is negative for the
2 presence of Lyme disease.

3 (END)

Barman, Mike

From: Logman, Andrew
Sent: Tuesday, October 29, 2013 1:59 PM
To: LRB.Legal
Subject: Draft Review: LRB -2616/1 Topic: Require a notice when ordering a test for Lyme disease about ineffectiveness of test

Please Jacket LRB -2616/1 for the ASSEMBLY.